

Agenda Date: 05/15/02  
Agenda Item: 5A

***STATE OF NEW JERSEY***

***Board of Public Utilities***

***Two Gateway Center***

***Newark, NJ 07102***

***www.bpu.state.nj.us***

**WATER AND WASTEWATER**

IN THE MATTER OF THE PETITION )  
OF ENVIRONMENTAL DISPOSAL )  
CORP. FOR AN INCREASE IN RATES )

ORDER GRANTING MOTION  
AND INITIATING PHASE 2  
BPU DOCKET NO.: WR99040249  
OAL DOCKET NO.: PUC 5487-99

(SERVICE LIST ATTACHED)

BY THE BOARD:

On June 7, 2000, the Board issued a rate decision in this matter (Rate Order). In the Rate Order, the Board provided for a Phase 2 proceeding to further explore the possibility of designing usage sensitive rates for sewerage service. Environmental Disposal Corp. (EDC) was ordered to perform a Feasibility Study which would be examined in the Phase 2 proceeding. EDC completed and submitted its Feasibility Study in February 2001. By such time, however, the Board's Rate Order was pending appeal by the Ratepayer Advocate in the Superior Court of New Jersey, Appellate Division. (In the Matter of the Petition of Environmental Disposal Corporation for an Increase in Rates, Superior Court, Appellate Division, Docket No. A-1590-00T3). Because of concerns related to the extent of Board jurisdiction pending an appeal, (see Court Rule 2:9-1) and also because of concerns with respect to how the Court's ultimate determination might impact upon the overall rate case, the Phase 2 proceeding was held in abeyance until disposition of the appeal.

Despite the pendency of the appeal, the Township of Bedminster (Bedminster), an intervener in the rate proceeding, filed a letter motion dated March 6, 2002, requesting that the Board initiate Phase 2. Bedminster asserts that a prompt examination of EDC's Feasibility Study is necessary in order to design equitable cost-based rates. Bedminster questions the reliability and accuracy

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of the Feasibility Study which, Bedminster argues, must be addressed during the Phase 2 proceeding.

The motion is opposed by EDC, primarily because it believes the Board lacks jurisdiction pending an appeal, but also, because EDC finds the timing of Phase 2 inappropriate. EDC argues that two years have elapsed from the Board's Rate Order and that the Phase 2 proceeding will most likely consume another year. According to EDC, given such a time frame, it would be advisable to await the filing of the Company's next rate case before examining the possibility of designing usage sensitive rates.

**Conclusion:**

The Board has carefully reviewed the moving papers and replies thereto and has concluded that the Phase 2 proceeding provided for in the Board's June 7, 2000 Rate Order should be initiated. EDC's primary objection to the motion, i.e. an asserted lack of Board jurisdiction pending an appeal, has become moot. On April 3, 2002, the Superior Court, Appellate Division, rendered its decision affirming the Board's June 7, 2000 Rate Order. With respect to EDC's argument that Phase 2 should be delayed until EDC's next rate case, the Company has given no indication that a rate case is imminent nor has it suggested any specific timetable. There would appear therefore to be no persuasive reason for delaying the exploration of usage sensitive rates which the Board committed to in its June 7, 2000 Rate Order.

Consequently, the motion filed by Bedminster is HEREBY GRANTED and the Phase 2 proceeding will be transmitted to the Office of Administrative Law for hearing as a contested case.

DATED: 5/16//02

BOARD OF PUBLIC UTILITIES  
BY:

**(SIGNED)**

JEANNE M. FOX  
PRESIDENT

**(SIGNED)**

FREDERICK F. BUTLER  
COMMISSIONER

**(SIGNED)**

CAROL J. MURPHY  
COMMISSIONER

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**(SIGNED)**

CONNIE O. HUGHES  
COMMISSIONER

ATTEST:

**(SIGNED)**

KRISTI IZZO  
BOARD SECRETARY

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